



# INDUSTRY CIRCULAR

**DEPARTMENT OF  
THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C. 20226**

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## FREE GOODS, DISCOUNTS, REBATES, REFUNDS AND PRICE REDUCTIONS

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars,  
Taxpaid Wine Bottling Houses; Brewers, Importers, Whole-  
sale Malt Liquor Dealers, Wholesale Liquor Dealers and  
Others Concerned:

Purpose. This circular is to advise industry members that ATF Ruling 76-16 will be published in the August issue of the ATF Bulletin. The ruling further amplifies the provisions of Revenue Ruling 54-161, C.B. 1954-1, 338 (Internal Revenue) and supersedes ATF Ruling 75-12, ATF C.B. 1975, 33. (See also ATF Ruling 74-6, ATF C.B. 1974, 50.) The ruling reads as follows:

The response from industry following the publication of ATF Ruling 74-6, ATF C.B. 1974, 50, which related to practices employed by some industry members who furnished retailers with inordinate amounts of free goods and/or substantial price reductions, volume discounts, rebates, and refunds, indicated that the ruling had been interpreted as a shift in the Bureau's position concerning pricing. Actually, the intent of the ruling was to merely re-emphasize and amplify our position established in Revenue Ruling 54-161, C.B. 1954-1, 338 (Internal Revenue).

In general, 27 U.S.C. 205(b)(3) states that it is unlawful for any producer, bottler, importer, or wholesaler of alcoholic beverages, directly or indirectly, or through an affiliate, to induce any retailer to purchase alcoholic beverages from him to the exclusion, in whole or in part, of any such products sold or offered for sale by other persons in interstate commerce by furnishing, giving, renting, lending, or selling to the retailer any fixtures, signs, supplies, money, services, or other things of value.

It was held in Revenue Ruling 54-161 that so-called free goods, discounts, rebates, refunds, and price reductions given to retailers pursuant to an agreement made at the time of sale are merely methods used to arrive at an agreed sales price and as such do not come within the purview of the Federal Alcohol Administration Act. However, if the free goods, discounts, rebates, etc., are such that the pricing aspect is merely a subterfuge, the transaction would constitute a "gift" within the meaning of 27 U.S.C. 205(b)(3).

The Bureau has consistently recognized that discounts, rebates, refunds, etc., may be granted to introduce new products, close out discontinued lines, and pass on to retailers savings to the supplier as a result of volume purchases, etc., and, as such, are methods used to arrive at an agreed sales price. However, if they are in reality a subterfuge for granting financial assistance to a retailer or for any other proscribed purpose, they would constitute a "gift" within the meaning of 27 U.S.C. 205(b)(3).

Approximately one year ago the Bureau, at the request of industry, issued ATF Ruling 75-12, ATF C.B. 1975, 33, setting forth cost guidelines to assist industry in distinguishing between legitimate price reductions and proscribed inducements.

Investigations to date have disclosed that uniform application of the criteria by the Bureau has been impeded by:

- (1) Differences in business or corporate structures.
- (2) Differences in accounting systems.
- (3) Difficulty in determining whether a particular "operating" cost item should be included or excluded in "total operating" cost.

The disparity created by the above factors makes it impossible to administer the criteria in a fair and equitable manner.

In view of the above, the Bureau modifies its position regarding free goods, discounts, rebates, refunds, etc., to the extent that it will now consider questionable, and subject to investigation, the operations of any

wholesaler or other supplier where it is found, or where there is reason to believe, the giving of a discount or price reduction results in a price to the retailer of less than the wholesaler's or supplier's "laid-in" cost. For the purposes of this ruling "laid-in" cost will be that cost incurred by a wholesaler or supplier to place the goods in inventory and would consist of such costs as manufacturer's invoice price, freight, and state and local taxes.

The above criteria will be applicable to all type discounts and price reductions (volume discounts, dollar volume purchases, combination "deals," etc.) and to all brand categories (confined brands, private label brands, etc.). Price determinations will be made primarily on an item by item basis for each item on an invoice.

The Bureau does not take the position that a sale below "laid-in" cost is automatically a violation of law, but merely that such a sale is questionable and may be investigated. If an investigation discloses that the discount, price reduction, etc., is in fact a subterfuge for granting financial assistance to a retailer the Bureau will consider the transaction a proscribed inducement; if the elements of exclusion and interstate or foreign commerce are also present, a violation of the Federal Alcohol Administration Act would be incurred.

It is not the intent of the Bureau to interfere with industry members' prerogative to use discounts, rebates, etc., as legitimate pricing arrangements. The Bureau's major objective in issuing this ruling is to furnish industry with the most effective yet practical criteria possible in distinguishing between legitimate price reductions and proscribed inducements. The criteria set forth above are intended solely to provide industry with a workable guideline with which to make this distinction.

Rev. Rul. 54-161, C.B. 1954-1, 338 (Internal Revenue), amplified by ATF Rul. 74-6, ATF C.B. 1974, 50, is hereby further amplified; ATF Rul. 75-12, ATF C.B. 1975, 33, is hereby superseded.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

*Rex D. Davis*

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Director

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